

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA **FILED**

ROBERT W. TRUMBLE,
Trustee for the Bankruptcy Estate of
Mark Lowman, and

JUN 10 2008
US DISTRICT COURT
MARTINSBURG, WV 28401

MARK LOWMAN,
Plaintiffs,

v.

Civil Action No. 3:08cv99

FREMONT INVESTMENT & LOAN,
Defendant.

NOTICE OF REMOVAL

COMES NOW the Defendant, FREMONT INVESTMENT & LOAN, by counsel, E. Taylor George, Esq., and notices the removal of this action from the Circuit Court of Berkeley County, West Virginia to the United States District Court for the Northern District of West Virginia, pursuant to 28 U.S.C. §§ 1441 et seq. In support of this notice, the Defendant provides the following:

1. This case was originally served on Defendants on 12 February 2008 as a state-law action in the Circuit Court of Berkeley County, West Virginia. At the time of filing, it was not apparent that the outcome of the action was dependant on the law of the United States, but rather, it appeared to focus solely upon the law of the State of West Virginia.
2. At a telephonic hearing held in an associated case in the United States Bankruptcy Court for the Northern District of West Virginia on 13 May 2008, it became apparent that the civil action was founded upon 12 U.S.C. §§ 85 and 1831d, as well as the relevant case law, in addition to the laws of the State of West Virginia. At that point, the United States Bankruptcy

Judge ruled that objections that had been filed to proofs of claim in the bankruptcy case would be denied without prejudice, pending the outcome of the civil action that related to them.

3. Removal is appropriate in this case pursuant to 28 U.S.C. § 1441(b), providing for the removal of cases where the district courts have original jurisdiction founded on a claim or right arising under the laws of the United States.

4. While 28 U.S.C. § 1446(b) normally requires removal within thirty (30) days of service of the initial pleadings on the defendant, there is an exception in the same section where, in cases where the pleadings do not make it apparent that the case is initially removable, removal may be taken within thirty (30) days of the date it becomes apparent that the case is actually removable. In the present case, this occurred on 13 May 2008, less than thirty (30) days before the date of this notice.

WHEREFORE, the Defendant, Fremont Investment & Loan, notices the removal of this case from the Circuit Court of Berkeley County, West Virginia to the United States District Court for the Northern District of West Virginia.

FREMONT INVESTMENT & LOAN

By counsel:



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I have seen, examined, and consent to the above:

MARK LOWMAN

By counsel:

/s/ Aaron C. Amore
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